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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Docket No. FD 35491

SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION –
SUPPLEMENTAL PETITION FOR DECLARATORY ORDER

EXPEDITED CONSIDERATION REQUESTED

ENTERED
Office of Proceedings

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Public Record

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Dated: September 7, 2011

Attorneys for Santa Cruz County
Regional Transportation Commission

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 35491

**SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION –
SUPPLEMENTAL PETITION FOR DECLARATORY ORDER**

On April 8, 2011, the Santa Cruz County Regional Transportation Commission (“SCCRTC”) filed a Petition for Declaratory Order (“Petition”) requesting that the Board declare that the transactions described therein among SCCRTC, Union Pacific Railroad Company (“UP”) and Sierra Northern Railway (“SERA”) were not subject to the Board’s regulatory authority, and that SCCRTC would not be subject to the Board’s regulatory authority as a carrier, under the Board’s precedents under *State of Maine, Department of Transportation – Acquisition and Operation Exemption – Maine Central Railroad*, 8 ICC 2d 835 (1991) (“*State of Maine*”) and its progeny. The Board, in a decision served on August 22, 2011 (the “August 22 Decision”) raised questions about the permanence and exclusivity of the freight operating easement reserved by UP, and about whether SCCRTC’s rights under the Administration, Coordination and License Agreement (the “ACL Agreement”) would allow SCCRTC to unduly interfere with SERA’s operation of the Line and the ability of SERA to fulfill its common carrier obligations. The August 22 Decision permitted SCCRTC to submit a modified quitclaim deed (with reserved easement) and ACL Agreement to address the Board’s concerns. SCCRTC is filing this Supplemental Petition to address the Board’s concerns and to submit for the Board’s consideration, a proposed Second Amendment to Purchase and Sale Agreement, with revised Quitclaim Deed (Attachment 1), and a proposed revised Administration, Coordination and License Agreement (Attachment 2), each of which is marked to show the proposed revisions. UP and SERA have authorized the undersigned to state that they agree to the proposed revisions.

DISCUSSION OF PROPOSED REVISIONS

As noted by the Board in its August 22 Decision, p.2, the *State of Maine* line of cases requires that the selling carrier [and any assignee] (1) retain a permanent, exclusive freight operating easement, and (2) sufficient control over the rail line to carry out the common carrier obligations. These were always the intentions of SCCRTC, UP and SERA; however, they are proposing certain revisions to the transaction documents previously submitted to clarify these intentions.

A *Quitclaim Deed*

The August 22 Decision raised questions about both the exclusivity and permanence of the freight easement reserved by UP in the quitclaim deed. SCCRTC is proposing to amend paragraph (a) of the quitclaim deed to clarify that the reserved easement will provide UP with the right to be the exclusive freight operator. See Attachment 1.¹ The proposed revisions to the quitclaim deed also eliminate references to the ACL Agreement in what were previously paragraphs (a)(i), (ii) and (iv) so that it is clear that the freight easement continues independently of the ACL Agreement. The quitclaim deed does provide that UP (or its assignee) can abandon freight service, but only if the operator seeks and obtains Board authority. Quitclaim Deed, ¶(a)(i) [formerly (a)(ii)].² Thus, until and unless the Board grants abandonment approval, the freight operating easement will continue as a perpetual exclusive easement for freight operations

¹ This is consistent with Section 2.1 of the revised ACL Agreement which confirms that SERA as the operator will have the exclusive right to provide freight service over the Line.

² This is consistent with Section 8.3 of the revised ACL Agreement which allows SERA to abandon service over all or part of the Line, but only after obtaining Board approval.

B ACL Agreement

The Board also expressed concern that certain provisions of the ACL Agreement could be read to permit SCCRTC to interfere unduly with SERA's common carrier obligations. SCCRTC proposes to clarify in several ways that this will not be the case. First, a new Section 2.3 has been added to specifically provide that the SCCRTC cannot exercise any retained rights in a manner that would materially interfere with SERA's Freight Service (common carrier) rights and obligations. Certain troublesome sections cited by the Board (Sections 4.2, 4.3, 6.2 and 6.3) have been modified so that SCCRTC no longer has the right to grant or withhold consent or approval in its sole discretion. (With the elimination of that requirement, Section 19 of the ACL Agreement provides that SCCRTC must exercise good faith and reasonable judgment in determining whether to grant or withhold consent.) Further, the consents in these sections are specifically made subject to the new Section 2.3 prohibiting interference with common carrier obligations without prior Board approval.¹ In addition to the change in the consent language, Section 6.3 has also been modified to make it clear that it only applies to locations outside of the Freight Easement Property, and does not apply to SERA's use of the easement. Similarly, the application of Section 7.1.2 has been amended to make clear that the laydown space that is the subject of the section is only space outside of the Freight Easement Property. Even at that, the Section has been amended to provide for alternative laydown space reasonably acceptable to SERA if it is determined that the original space is no longer appropriate.

¹ The August 22 Decision also cited Section 4.1; however, SCCRTC does not believe that section needs to be revised. It provides that all agreements related to railroad operations will be assigned by UP to SERA. Only agreements that do *not* relate to railroad operations will be assigned by UP to SCCRTC. Additionally, the requirement for the use of pre-approved forms (Section 19 requires good faith and reasonable judgment) in Section 4.2 has not been modified since this should not unduly interfere with SERA's operations and allows SCCRTC to assure that SCCRTC, as well as SERA, will be indemnified and protected by the user (a common requirement by owners of railroad property).

SCCRTC believes that the ACL Agreement, with the proposed modifications, clarifies that SCCRTC will not have the ability to unduly interfere with SERA's common carrier operations.

REQUESTED RELIEF


Based on the foregoing, SCCRTC hereby requests that the Board declare that the transactions described herein, if consummated pursuant to the Second Amendment to Purchase and Sale Agreement, with revised Quitclaim Deed, and the revised Administration, Coordination and License Agreement, would not be subject to the Board's regulatory authority, and that SCCRTC would not be subject to the Board's regulatory authority as a carrier, under the Board's precedents under *State of Maine*.

EXPEDITED CONSIDERATION REQUESTED

SCCRTC is relying upon public funding in the form of grants from the California Transportation Commission ("CTC"). The funding for the purchase has been approved and is currently available. However, additional funding (\$5.3 million) for needed bridge rehabilitation and other improvements has not been secured yet because SCCRTC needs to own the rail line before an allocation request can be submitted to CTC. To access the rehabilitation funds, SCCRTC will have to submit detailed final engineering plans. These plans cannot be prepared until SCCRTC can provide the UP detailed as built engineering documents to its engineering consultants, which at this time can only be delivered upon the closing of the purchase of the Line from UP. Accordingly, as noted in the letter from Congressman Sam Farr dated July 21, 2011,

and filed with the Board, the approval of the transaction documents is requested as promptly as possible

Respectfully submitted,



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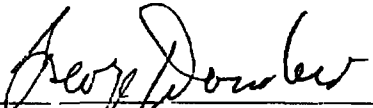
Dated: September 7, 2011

Attorneys for Santa Cruz County
Regional Transportation Commission

VERIFICATION

I, George Dondero, Executive Director of Santa Cruz County Regional Transportation Commission, verify under penalty of perjury that statements contained in the foregoing Petition for Declaratory Order are true and correct to the best of my knowledge and belief. Further, I certify that I am qualified and authorized to file this Verification.

Executed on September 7, 2011.



George Dondero


CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused a copy of the foregoing Supplemental Petition for Declaratory Order to be served electronically on Union Pacific Railroad Company and Sierra Northern Railway as follows:

David Magaw, President
Sierra Northern Railway
341 Industrial Way
Woodland, CA 95776
davemagaw@gmail.com

Mack H. Shumate, Jr.
Law Department
Union Pacific Railroad Company
101 North Wacker Drive
Suite 1920
Chicago, Illinois 60606
mackshumate@up.com

Dated: September 7, 2011



Eric M. Hocky

ATTACHMENT 1

**SECOND AMENDMENT TO
PURCHASE AND SALE AGREEMENT**

First American Title Company ("Escrow Holder")
100 Spear Street, Suite 1600
San Francisco, California 94105
Attention: Kimberleigh Toci
Telephone: (415) 837-2251
Facsimile: (415) 398-1750

Escrow No. NCS-138073-SF

**SECOND AMENDMENT TO
PURCHASE AND SALE AGREEMENT
AND ESCROW INSTRUCTIONS**

This SECOND AMENDMENT TO PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (the "**Amendment**") is made as of September 7, 2011, by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("**Seller**"), and SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION, a public agency created under California law ("**Buyer**").

Recitals

- A WHEREAS, effective August 20, 2010, Buyer and Seller entered into that certain PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS, which agreement was amended by the FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS, dated as of March 25, 2011 (as amended, the "**Purchase Agreement**"); and
- B WHEREAS, Buyer and Seller desire to amend the Purchase Agreement as set forth in this Amendment.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

- 1. Except as otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Purchase Agreement.
- 2. Exhibit D of the Purchase Agreement is amended by deleting the original Exhibit D in its entirety and replacing it with the new Exhibit D attached to this Amendment incorporated herein.
- 3. *Except as expressly amended herein, all of the terms and conditions of the Purchase Agreement shall remain in full force and effect.*

IN WITNESS WHEREOF, Buyer and Seller have executed this Amendment effective as of the date first above written

SELLER:

**UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation**

By: _____
Title: _____

BUYER:

**SANTA CRUZ COUNTY REGIONAL
TRANSPORTATION COMMISSION,
a public agency created under California law**

By: _____
George Dondero, Executive Director

Approved as to Form:

Rahn Garcia, General Counsel

THE UNDERSIGNED ESCROW HOLDER ACKNOWLEDGES ITS RECEIPT OF ONE
EXECUTED COPY OF THIS AMENDMENT AND AGREES TO ACT IN ACCORDANCE
THEREWITH

ESCROW HOLDER:

FIRST AMERICAN TITLE COMPANY

By: _____
_____. Escrow Officer

EXHIBIT D**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION

_____, California ____
Attn _____**MAIL TAX STATEMENTS TO:**

SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION

_____, California ____
Attn _____

THIS INSTRUMENT IS EXEMPT FROM RECORDING FEES (GOVERNMENT CODE §6103) AND FROM DOCUMENTARY TRANSFER TAX (REVENUE AND TAXATION CODE §11922)

(Space above line for Recorder's use only)

QUITCLAIM DEED

FOR VALUE RECEIVED, UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("**Grantor**"), REMISES, RELEASES and QUITCLAIMS to SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION, a public agency created under California law ("**Grantee**"), all of Grantor's rights, title, and interest in and to that certain real property (the "**Property**") in the County of [Santa Cruz/Monterey, as applicable], State of California, described on **Schedule 1** attached hereto and incorporated by reference.

EXCEPTING from this quitclaim and RESERVING unto Grantor, its successors and assigns, forever (except as otherwise provided in the easement reserved for freight railroad purposes), the following

(a) Subject to the terms and conditions below, Grantor excepts from the Property hereby quitclaimed and reserves unto itself, its successors and assigns, forever, an exclusive easement upon, over, under and across the Property, extending ten (10) feet on either side of the center line of the existing tracks and including rights of access along the length thereof, for purposes of conducting freight rail operations and otherwise to fulfill Grantor's rights and obligations as a common carrier freight railroad under applicable federal laws and

regulations, including the right to use the Property to provide freight rail service to all customers on or served from the Property, and to operate, use, construct, reconstruct, maintain, repair, relocate and/or remove existing and/or future railroad, rail and railroad-related equipment, facilities and transportation systems necessary for and related to freight rail operations (the "**Freight Easement**");

(i) ~~This Freight Easement is made subject to the unrecorded Administration and Coordination Agreement between Grantee and Sierra Northern Railway ("Short Line Operator"), dated as of [] [] [], 2010, as the same may be amended from time to time. The Administration and Coordination Agreement includes terms and conditions governing the following, without limitation: maintenance, repair and replacement of the Freight Easement and improvements thereon; allocation of liability; reasonable restrictions on rail car storage and use of lay down space; tourist rail service; future modifications and improvements to the Property, including the Freight Easement; reservations of rights by the Grantee; and expiration and termination of the Administration and Coordination Agreement.~~

(ii) ~~— Abandonment of all or part of the Property. Grantor may at any time, for any reason, and in its sole discretion, seek STB authority (or an exemption therefrom) to abandon freight service, over all of, or any segment of, the Property. Grantee agrees to cooperate with, and not to directly or indirectly oppose, Grantor's abandonment efforts. If Grantee timely files with the STB a Statement of Willingness to Assume Financial Responsibility meeting the requirements of the STB's regulations, Grantor shall file with the STB: (A) an expression of willingness to enter into a rail banking/trail use agreement; (B) a statement that Grantee and Grantor have entered into such an agreement; and (C) a request that the STB issue a Notice of Interim Trail Use (NITU) or Certificate of Interim Trail Use (CITU), as appropriate. Upon the effective date of each such NITU or CITU, or upon Grantor's abandonment of freight service over all of, or any segment of, the Property, (X) Grantor shall execute and deliver to Grantee an option to acquire Grantor's right to restart freight rail service on the subject segment of the Property in the form attached hereto as **Schedule 2**; and (Y) Grantor's freight easement, and the Administration and Coordination Agreement between the Short Line Operator and Grantee, shall automatically terminate with respect to such segment without any further liability hereunder to Grantee on the part of Grantor and the Short Line Operator, unless the Administration and Coordination Agreement specifically provides otherwise. After such automatic termination, upon Grantee's request and at Grantee's expense, Grantor shall execute a quitclaim of such freight easement as to such segment. Grantor may withdraw any abandonment in its sole discretion.~~

(iii) Offers of Financial Assistance If Grantor seeks abandonment of any segment of the Property and Grantor receives an Offer of Financial Assistance ("OFA") with

respect thereto, Grantor shall promptly notify Grantee in writing. Grantee (or its designee) may, at its option, submit its own OFA in the amount of \$1 00 and Grantor shall accept the OFA submitted by Grantee (or its designee).

~~(iv) — Nonuse of Freight Easement Property: Default under Administration and Coordination Agreement. If any segment of the Property subject to this Freight Easement is not regularly used (as defined in the Administration and Coordination Agreement) for freight rail purposes for a period of one (1) year, or a material default occurs under the Administration and Coordination Agreement without being cured under the terms and conditions thereof, Grantor shall, at Grantee's request, enter into a rail banking/trail use agreement and otherwise comply with the provisions of paragraph (ii), or cooperate with an application by Grantee, or its designee, to commence common carrier freight service on the Property.~~

~~(viii) Successors and Permitted Assigns. All of the terms and conditions of this Freight Easement shall be binding upon, and inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns. Grantor may not assign this Freight Easement except as provided in the Administration and Coordination Agreement. Any assignment of this Freight Easement shall be conditioned upon the assignee assuming all obligations set forth herein and entering into an Administration, Coordination and License Agreement with Grantee in the Administration and Coordination Agreement. Grantee hereby consents to the assignment of this Freight Easement to Sierra Northern Railway ("Short Line Operator") Short Line Operator. Notwithstanding any language herein to the contrary, Union Pacific Railroad Company as Grantor shall have the unrestricted right to assign its rights and interest under this Freight Easement to Short Line Operator, and upon Union Pacific Railroad Company's assignment of its rights and interest under this Freight Easement to Short Line Operator, Union Pacific Railroad Company shall be released and discharged from any further obligation or liability under this Freight Easement and references to "Grantor" hereunder shall then refer to Short Line Operator or any successor to Short Line Operator, as applicable.~~

(b) The existing eight inch (8") sanitary sewer pipeline and appurtenant facilities referred to in the following sentence, whether owned by Grantor or any third party, and a perpetual easement upon, over, along, under and across the portion of the Line that lies five feet (5') on each side of the centerline of such existing eight inch (8") sanitary sewer pipeline and appurtenant facilities (the "Easement Area"), for the purposes of constructing, maintaining, repairing, operating, renewing, replacing, using and/or removing the eight inch (8") sanitary sewer pipeline and appurtenant facilities (whether now or hereafter installed, and including facilities which are the technological successor to any existing or hereafter installed facilities);

together with (a) the right of ingress and egress to and from the Easement Area, and (b) the right to collect the rents, issues and profits therefrom, and from any existing contracts. In addition to and not in limitation of Grantor's rights under the foregoing reservation of easement, Grantee, for itself, its successors and assigns, hereby covenants and agrees that Grantee shall not interfere with the rights of Grantor's Licensee under that certain License Agreement between Southern Pacific Transportation Company (predecessor in interest to Grantor) and Holcomb Corporation dated July 27, 1990, identified in the records of Grantor as Audit Number S211235, and granting certain rights to said Licensee to use a portion of the Line for eight inch (8") sanitary sewer pipeline purposes. This reserved right is intended solely to permit Grantor to honor its obligations under said License Agreement and does not constitute a reservation of rights for any other purpose.

(c) The existing eight inch (8") sanitary sewer pipelines and appurtenant facilities referred to in the following sentence, whether owned by Grantor or any third party, and a perpetual easement upon, over, along, under and across the portion of the Line that lies five feet (5') on each side of the centerline of such existing eight inch (8") sanitary sewer pipeline and appurtenant facilities (the "Easement Area"), for the purposes of constructing, maintaining, repairing, operating, renewing, replacing, using and/or removing the eight inch (8") sanitary sewer pipeline and appurtenant facilities (whether now or hereafter installed, and including facilities which are the technological successor to any existing or hereafter installed facilities); together with (a) the right of ingress and egress to and from the Easement Area, and (b) the right to collect the rents, issues and profits therefrom, and from any existing contracts. In addition to and not in limitation of Grantor's rights under the foregoing reservation of easement, Grantee, for itself, its successors and assigns, hereby covenants and agrees that Grantee shall not interfere with the rights of Grantor's Licensee under that certain License Agreement between Southern Pacific Transportation Company (predecessor in interest to Grantor) and Holcomb Corporation dated July 27, 1990, identified in the records of Grantor as Audit Number S211236, and granting certain rights to said Licensee to use a portion of the Line for eight inch (8") sanitary sewer pipeline purposes. This reserved right is intended solely to permit Grantor to honor its obligations under said License Agreement and does not constitute a reservation of rights for any other purpose.

(d) The existing four inch (4") VCP sewer and four inch (4") copper water pipelines and appurtenant facilities referred to in the following sentence, whether owned by Grantor or any third party, and a perpetual easement upon, over, along, under and across the portion of the Line that lies five feet (5') on each side of the centerline of such existing four inch (4") VCP sewer and four inch (4") copper water pipeline and appurtenant facilities (the "Easement Area"), for the purposes of constructing, maintaining, repairing, operating, renewing, replacing, using and/or removing the four inch (4") VCP sewer and four inch (4") copper water pipeline and appurtenant facilities (whether now or hereafter installed, and including facilities which are the technological successor to any existing or hereafter installed facilities); together with (a) the right of ingress and egress to and from the Easement Area, and (b) the right to collect the rents, issues and profits therefrom, and from any existing contracts. In addition to and not in limitation of Grantor's rights under the foregoing reservation of easement, Grantee, for itself, its successors and assigns, hereby covenants and agrees that Grantee shall not interfere with the rights of Grantor's Licensee under that certain License Agreement between Southern Pacific Transportation Company (predecessor in interest to Grantor) and James G. Speth dated March

19, 1980, identified in the records of Grantor as Audit Number S204567, and granting certain rights to said Licensee to use a portion of the Line for four inch (4") VCP sewer and four inch (4") copper water pipeline purposes. This reserved right is intended solely to permit Grantor to honor its obligations under said License Agreement and does not constitute a reservation of rights for any other purpose

(c) The existing twenty-four inch (24") storm drain pipelines and appurtenant facilities referred to in the following sentence, whether owned by Grantor or any third party, and a perpetual easement upon, over, along, under and across the portion of the Line that lies five feet (5') on each side of the centerline of such existing twenty-four inch (24") storm drain pipeline and appurtenant facilities (the "Easement Area"), for the purposes of constructing, maintaining, repairing, operating, renewing, replacing, using and/or removing the twenty-four inch (24") storm drain pipeline and appurtenant facilities (whether now or hereafter installed, and including facilities which are the technological successor to any existing or hereafter installed facilities); together with (a) the right of ingress and egress to and from the Easement Area, and (b) the right to collect the rents, issues and profits therefrom, and from any existing contracts. In addition to and not in limitation of Grantor's rights under the foregoing reservation of easement, Grantee, for itself, its successors and assigns, hereby covenants and agrees that Grantee shall not interfere with the rights of Grantor's Licensee under that certain License Agreement between Southern Pacific Transportation Company (predecessor in interest to Grantor) and Phillips Driscopipe, Inc. dated April 20, 1995, identified in the records of Grantor as Audit Number S715469, and granting certain rights to said Licensee to use a portion of the Line for twenty-four inch (24") storm drain pipeline purposes. This reserved right is intended solely to permit Grantor to honor its obligations under said License Agreement and does not constitute a reservation of rights for any other purpose

IN WITNESS WHEREOF, the undersigned have executed this Quitclaim Deed as of _____, 2010.

Attest:

**UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation**

Assistant Secretary

By: _____
Title: _____

(SEAL)

**SANTA CRUZ COUNTY REGIONAL
TRANSPORTATION COMMISSION, a public
agency created under California law**

By _____
Name: _____
Title: _____

APPROVED AS TO FORM:

Counsel

STATE OF NEBRASKA)

)

COUNTY OF DOUGLAS)

On _____, 2010, before me, a Notary Public in and for said County and State, personally appeared _____ and _____, who are the _____ and the Assistant Secretary, respectively, of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

(SEAL)

STATE OF CALIFORNIA)

1 ss.

COUNTY OF SANTA CRUZ)

On _____, 2010 before me, a Notary Public in and for said County and State, personally appeared _____ and _____ who are the _____ and the _____, respectively, of SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION, a public agency created under California law, and who are personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to in the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

My commission expires: _____

(SEAL)

SCHEDULE 1 TO QUITCLAIM DEED

LEGAL DESCRIPTION OF PROPERTY

SCHEDULE 2 TO QUITCLAIM DEED

FORM OF OPTION [To Be Executed in Recordable Form]

1. The portion of the Property between milepost [] and milepost [] (the "**Railbanked Property**") is subject to the effective orders of the Surface Transportation Board ("**STB**") applying Section 8(d) of the National Trails System Act, 16 U.S.C. Section 1247(d). The Railbanked Property shall remain under the jurisdiction of the STB (or its successor agency) pursuant to applicable regulations of said agency for reactivation of freight rail service and for interim trail use. In the event Grantee shall apply to the STB (or its successor agency) to cease railbanking all or any portion of the Railbanked Property, Grantor shall not object to such application.

2. Grantor hereby grants to Grantee an option for a period of 99 years after the date of this Option to acquire Grantor's residual right to reactivate freight rail service on all or any portion of the Railbanked Property. Such option (i) shall be exercisable upon 10 days prior written notice to Grantor after Grantee has obtained regulatory authority to acquire such residual right, and upon tender of \$10 as additional consideration, or (ii) may be waived by Grantee upon written notice to Grantor.

3. If Grantor reactivates freight rail service on any portion of the Railbanked Property, Grantor (i) shall reimburse Grantee for the amount Grantee has paid for the portion of the Railbanked Property in question, including all improvements subsequently constructed thereon, or the then-current market value of the portion of the Railbanked Property in question, whichever is greater, and (ii) shall be solely responsible for the restoration of tracks, ties and other structures necessary for freight rail service.

CERTIFICATE OF ACCEPTANCE**(Pursuant to Government Code §27281)**

This is to certify that the interest in real property transferred by Quitclaim Deed as of _____, 2010, from Union Pacific Railroad Company, a Delaware corporation, to the SANTA CRUZ COUNTY REGIONAL TRANSPORTATION COMMISSION, a public agency created under California law ("Grantee"), is hereby accepted by the undersigned officer pursuant to authority conferred by Resolution No. ____ of Grantee's Commission, adopted _____, 2010, and Grantee consents to recordation thereof by its duly authorized representative.

**SANTA CRUZ COUNTY
REGIONAL TRANSPORTATION
COMMISSION**

Date: _____, 2010

By. _____

Title: _____

APPROVED AS TO FORM:

Counsel

ATTACHMENT 2

ADMINISTRATION, COORDINATION AND LICENSE AGREEMENT

ADMINISTRATION, COORDINATION, AND LICENSE AGREEMENT

This administration, coordination, and license agreement is dated _____, 20402011, and is between the Santa Cruz County Regional Transportation Commission (the "Commission"), a public agency created under California law, and Sierra Northern Railway, a California Corporation ("Sierra").

The Commission purchased the Santa Cruz Branch railroad line (the "Property") from Union Pacific Railroad Company ("UP"), via an August 20, 2010, Purchase and Sale Agreement (the "Purchase and Sale Agreement"), and

UP reserved an easement to conduct common carrier freight railroad operations on and over the Property (the "Freight Easement"), which Freight Easement is set forth in the Quitclaim Deed by which UP, as grantor, quitclaimed all of its right, title and interest in and to the Property to the Commission, as grantee; and

UP has quitclaimed all of its right, title, and interest in and to the Freight Easement to Sierra and Sierra is the sole freight rail operator on the Freight Easement;

Sierra needs a long-term agreement of at least 10 years, covering all facets of railroad operations, in order to justify its investment of time and money needed to conduct such railroad operations, and

Sierra and the Commission desire to establish their respective rights and obligations with respect to the Property and the Freight Easement by entering into this agreement.

The parties therefore agree as follows

1. Definitions

- 1.1 The term "Commission" is defined in the introductory paragraphs of this agreement and includes its directors, officers, employees, agents, parents, subsidiaries, affiliates, commonly controlled entities, and all others acting under its or their authority.
- 1.2 The term "Coordination Committee" is defined as the committee established by the parties pursuant to Section 11
- 1.3 The term "FRA" is defined as the United States Federal Railroad Administration or its regulatory successor.
- 1.4 The term "Freight Easement" is defined in the introductory paragraphs of this agreement.

- 1.5 The term "Freight Easement Property" is defined as the portion of the Property subject to the Freight Easement consisting of all real and personal property within 10 feet of the centerline of any track on the Property except where roadways, buildings, or Property boundary lines reduce such distance to less than 10 feet, and except for any retained rights and personal property described herein
- 1.6 The term "Freight Service" is defined as any and all common carrier rail freight operations, rights, or obligations as to the Freight Easement Property including freight transportation, switching, temporary rail car storage (subject to the conditions of Section 2.45), transloading freight and dispatching.
- 1.7 The term "Hazardous Materials" is defined as any substance: (a) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as any hazardous waste, hazardous substance, bio-hazard, medical waste, pollutant, or contaminant under any governmental statute, code, ordinance, regulation, rule, or order, or any amendment thereto, including the Hazardous Material Transportation Act 49 U.S.C. § 5101 *et seq.*, the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, and the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, or (b) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous, or otherwise hazardous, including gasoline, diesel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon, and urea formaldehyde foam insulation.
- 1.8 The term "Hazardous Materials Laws" means all present and future governmental statutes, codes, ordinances, regulations, rules, orders, permits, licenses, approvals, authorizations, and other requirements of any kind applicable to Hazardous Materials
- 1.9 The terms "include", "includes", and "including" are to be read as if they were followed by the phrase "without limitation."
- 1.10 The term "Loss" is defined as any loss, damage, claim, demand, action, cause of action, penalty, fine, payment, cost, liability, or expense of whatsoever nature, including court costs and reasonable attorneys' fees, resulting from or related to: (a) any injury to or death of any person, including officers, agents, and employees of the Commission or Sierra; or (b) damage to or loss or destruction of any property, including the Property, any adjacent property, and the roadbed, tracks, equipment, other property of the Commission or Sierra, and any property in the Commission's or Sierra's care or custody.

- 1.11 The term "Property" is defined as the entire Santa Cruz Branch railroad line right-of-way purchased from UP by the Commission, including all improvements thereto, whether now existing or hereafter constructed
- 1.12 The term "Railroad Facilities" is defined as all tracks and other railroad property and fixtures, including ties, switches, trackbeds, bridges, trestles, retaining walls, culverts, railroad signs, switch mechanisms, signals, grade crossings, active and passive grade crossing warning devices and other appurtenances associated with the trackage described on Exhibit A and located on the Freight Easement Property
- 1.13 The term "Sierra" is defined in the introductory paragraphs of this agreement and includes its directors, officers, employees, agents, parents, subsidiaries, affiliates, commonly controlled entities, any other related persons and entities, and all others acting under its or their authority.
- 1.14 The term "STB" is defined as the United States Surface Transportation Board or its regulatory successor.
- 1.15 The term "Tourist Service" is defined as the transportation of tourists by rail. Tourist Service does not include regularly-scheduled passenger transit or commuter service
- 1.16 The term "UP" is defined in the introductory paragraphs of this agreement.

2 Commission Grants Rights

- 2.1 Freight Service The Commission grants Sierra the exclusive right and obligation to provide Freight Service on the Freight Easement Property. Sierra's rights and obligations to provide Freight Service under this agreement are limited to those set forth in the Freight Easement or in this agreement. Sierra may not, in performing such Freight Service, exceed the maximum speeds authorized by applicable law for the existing track conditions or transport rail cars exceeding the applicable track and bridge weight limits.
- 2.2 Trackage License. The Commission grants Sierra an exclusive license to use, maintain, repair, and operate all of the Railroad Facilities for all Freight Service purposes. Notwithstanding their location on the Freight Easement Property, buildings and other fixtures which are not appurtenances associated with the tracks and related railroad property are not included as part of this license.

2.3. No Material Interference with Freight Service. Notwithstanding the rights retained by the Commission under this agreement, the exercise of such rights by the Commission may not materially interfere with Sierra's Freight Service rights and obligations under federal law, unless first approved by the STB.

2.4. Tourist Service and Other Third-Party Licenses.

2.4.1. Sierra Tourist Service. The Commission grants Sierra a non-exclusive license to use the Freight Easement Property and Railroad Facilities to provide Tourist Service between Milepost 18.74 in Santa Cruz and Milepost 31.39 in Davenport; provided that prior to the commencement of operations (a) the Commission has approved in writing a detailed plan from Sierra describing such Tourist Service, (b) the Tourist Service will not materially conflict with, and will be subject and subordinate to Freight Service, and (c) Sierra has obtained any governmental authorizations required under applicable law for such Tourist Service. Sierra's Tourist Service plan shall include, at a minimum, the proposed seasons, dates and times of operation (including a proposed train schedule), a financial plan and a marketing plan. The parties understand and agree that Sierra may assign this Tourist Service license to Mendocino Railway by written assignment approved in writing by the Commission. The assignment shall require Mendocino Railway to be bound by the terms and conditions of this agreement relating to this Tourist Service license and to attorn to the Commission as the licensor. No such assignment shall relieve Sierra of its obligations under this agreement, including obligations related to this Tourist Service license.

2.4.2. Third-Party Licenses. The Commission reserves the right to grant additional licenses over the Freight Easement Property and the Railroad Facilities provided that any such licenses: (a) do not materially conflict with, and are subject and subordinate to, Sierra's right to use, maintain, repair, and operate all of the Railroad Facilities for all Freight Service purposes, (b) do not materially conflict with any other license with a plan previously approved in writing by the Commission, (c) require the licensee to pay its proportionate share of Sierra's costs (including labor costs, materials costs, equipment costs — using equivalent rental costs as a proxy for capital and maintenance and repair

costs -- travel, fuel, contract labor, and appropriate overhead) to maintain and repair the portion of the Freight Easement Property and Railroad Facilities used by the licensee, and (d) require the licensee to (i) provide insurance equal to or better than that required of Sierra in Section 9 and (ii) indemnify and hold harmless Sierra and the Commission as to any Loss arising out of or related to licensee's operations.

2.4.2.1. For a period of three years after the effective date of this agreement, any third-party license for Tourist Service between Milepost 20.9 and Milepost 31.39 will be deemed to materially conflict with Sierra's Tourist Service license, except in the case of special Tourist Service events as described in Section 2.34.2.9. The provisions of this Section 2.34.2.1 are conditioned on the following (all dates are measured following the effective date of this agreement):

- a. Within 6 months: Sierra shall submit its plan for its initial Tourist Service to the Commission pursuant to Section 2.34.1
- b. Within 3 months after Commission approval of initial plan: Sierra shall ensure that the Railroad Facilities for its initial Tourist Service meet and are maintained to Class 1 track standards and obtain appropriate FRA and PUC inspections to verify the same
- c. Within 5 months after Commission approval of initial plan: Sierra shall secure all permits and agreements required to operate its initial Tourist Service
- d. Within 6 months after Commission approval of initial plan: Sierra shall initiate its initial Tourist Service.
- e. Levels of Service: Sierra's Tourist Service shall carry the following numbers of revenue passengers:
 - I. First Year of Service: 5,000 passengers.
 - II. Second Year of Service: 10,000 passengers.
 - III. Third Year of Service: 15,000 passengers.

2.4.2.2 Following the date that is three years after the effective date of this agreement, a third-party license will be deemed to materially conflict with another license with a plan previously approved in writing by the Commission if the third party (a) operates on a substantially similar portion of the Freight Easement Property and Railroad Facilities covered by the previously-approved license/plan, (b) permits an activity that is substantially similar to the previously-approved license/plan and (c) operates during substantially similar seasons, and on substantially similar days and times of day, as the previously-approved license/plan.

2.4.2.3. If Sierra or any third-party licensee ("Tourist Operator") fails to initiate and continue to operate Tourist Service substantially in accordance with the plan approved by the Commission, then the applicable Tourist Operator's operations may, at the Commission's option, lose priority over any other operations, but only to the extent of such failure to operate.

2.4.2.4. If Sierra constructs capital improvements to the portion of the Freight Easement Property and Railroad Facilities used by the licensee, the Commission shall promptly and reasonably determine (i) the benefit of such improvements to the licensee, (ii) the cost apportionment of such improvements between Sierra and the licensee, and (iii) the appropriate amortization period for such improvements (for capital improvements the Commission shall make such determination concurrently with its approval of such capital improvements pursuant to Section 6.2). The licensee will, within 30 days following receipt of written notice, pay amounts due. As used in this agreement, the term "capital improvement" means any improvement or repair that is subject to the capital depreciation rules of the Internal Revenue Service.

2.4.2.5. The licensee's proportionate share of Sierra's costs shall be calculated in advance by Sierra (based on the prior year's maintenance and repair costs plus any reasonably anticipated extraordinary maintenance and repair costs, and the parties'

relative need or usage during the licensee's operating season) on a car-mile basis as to the portion of the Freight Easement Property and Railroad Facilities used by any licensee (As used in this subsection, "repair costs" refers to the cost of repairs that maintain property in good operating condition and not to repairs that are "capital improvements," which are dealt with in Subsection 234.2.4.) The licensee shall pay its proportionate share of costs monthly in advance during the months of the licensee's operations. Sierra shall at the end of each calendar year reconcile the amounts paid to the actual costs incurred. If the actual costs exceed the amount charged to the licensee, the licensee will within 30 days following receipt of written notice of such reconciliation pay the additional amount to Sierra. If the actual costs are less than the amount charged to the licensee, Sierra will within 30 days following such reconciliation refund the balance to the licensee.

2.4.2.6. If the Commission, in its discretion, elects to require a lower level of insurance coverage for the licensee than the level of coverage then required of Sierra under Section 9, the Commission shall correspondingly lower the limits of coverage required of Sierra under Section 9, provided that if Sierra elects to reduce the levels of its insurance, it shall also reduce the self-insured retention to the level required of the third-party licensee.

2.4.2.7. The Commission or its designee shall have the right to review, obtain, and copy all books, records, computer records, accounts, documentation and any other materials (collectively "Records") pertaining to Sierra's costs that are subject to apportionment under this section, including any Records in the possession of any subcontractors, for the purpose of monitoring, auditing, or otherwise verifying said costs. Sierra agrees to provide the Commission or its designees with any Records requested for this purpose and shall permit the Commission or its designees access to its premises, upon reasonable notice, during normal business hours, for the purpose of inspecting and copying such Records. Sierra further agrees to maintain such Records for a period of three years. The Commission

acknowledges and agrees that these Records constitute Sierra's confidential information and shall not be disclosed to any third-party without Sierra's prior written approval, except as otherwise required by applicable law.

2.4.2.8 Sierra will reasonably cooperate with any third party holding rights to use the Property, including, without limitation, any third-party Tourist Service operator seeking to secure the necessary certification or qualification required by applicable law to operate on the Railroad Facilities.

2.4.2.9. In addition to all other rights of Commission under this agreement, and notwithstanding anything to the contrary in this agreement, the Commission reserves the right to use the Freight Easement Property and Railroad Facilities for special events. Such special events shall be subject to the provisions of Sections 2.34.2.(a) and (b), provided that such special events will only be deemed to materially conflict with another license with a plan previously approved in writing by the Commission if they operate during the same season, and on the same days and times of day, as the previously-approved license/plan. The Commission will consult with Sierra regarding Sierra's willingness and ability to operate such special events.

If the Commission elects to have Sierra operate the special event, Sierra will operate the special event for an all-inclusive fee (for locomotive, crew, fuel, trainset, and trackage rights) (the "Special Event Fee") in the amount of \$4,500 per day. If the Commission elects to have another operator operate the special event, the Special Event Fee paid to Sierra will be \$2,500 per day, which fee shall cover all services to be provided by Sierra to support an event operated by a third party including, but not limited to, dispatching, inspections, and maintenance (but excluding Sierra's provision of any locomotive, trainset, crew, and fuel). The Special Event Fee shall be adjusted annually as of July 1st of each year to an amount calculated by multiplying the Special Event Fee specified above by a fraction, the numerator of which shall be the United States Department of Labor's Bureau of

Labor Statistics Consumer Price Index, All Urban Consumers. All Items, San Francisco-Oakland-San Jose, CA (1982-84=100), or the successor of such index (the "CPI"), for the month immediately preceding such adjustment, and the denominator of which shall be the CPI for June 2010. Nothing in this paragraph shall preclude the Commission and Sierra from negotiating other arrangements for special events (e.g., special events for which there is a different operational or fee structure, including events for which Sierra is both the operator and receives all or a portion of the fare revenue).

2.5 Temporary Rail Car Storage. Subject to the terms and conditions of this agreement, Sierra may enter into agreements with any party for temporary rail car storage or repairs. However, Sierra shall not enter into any agreements pursuant to this section without obtaining the Commission's prior written consent

2.5.1. Unless otherwise expressly agreed by the Commission in writing, Sierra will not (i) store more than 100 rail cars, (ii) store rail cars in locations other than those marked on Exhibit B (which locations are intended to substantially avoid visibility from Highway 1 and blocking designated public beach access), or (iii) store any rail car for more than six months. Absent the Commission's prior written consent, which consent may be withheld in the Commission's sole discretion, Sierra may not store railcars that have been used to transport Hazardous Materials unless such railcars are empty or contain only residual amounts of Hazardous Materials.

2.5.2. Following the earlier of (i) Sierra's institution of Tourist Service pursuant to Subsection 2.34.1, or (ii) three years after the effective date of this agreement, Sierra shall not exercise its right to use the Freight Easement Property or Railroad Facilities for temporary rail car storage or repair in a manner that materially affects the ability of any third-party Tourist Service licensee to access the Railroad Facilities for the purpose of exercising its licensed rights. A reciprocal provision will be placed in any third-party license for Tourist Service granted by the Commission.

2.5.3. The provisions of Subsections 2.45.1 and 2.45.2 apply to future storage agreements as well as storage agreements existing as of the effective date of this agreement.

2.6. Investigation.

2 6.1 Sierra hereby acknowledges that (a) it has satisfied itself at the time of this agreement with respect to the condition of the Freight Easement Property and Railroad Facilities and their suitability for Sierra's intended use; (b) it has made such investigations as it deems necessary with respect to the Freight Easement Property and Railroad Facilities, as they exist at the time of this agreement, and assumes responsibility therefor as to its occupancy and use thereof; and (c) neither the Commission nor any of the Commission's agents has made any oral or written representations or warranties with respect to the Freight Easement Property or Railroad Facilities.

2 6.2. The Commission acknowledges that Sierra cannot make any investigation, or satisfy itself, with respect to how the Property or the public's use of the Property may change following the Commission's purchase of the Property from UP. In the event that any public use of the Property, or illegal activities by third parties including trespassing, cause any significant economic or operational problems for Sierra, Sierra may terminate this agreement, provided Sierra complies with the provisions of Section 8.3.

2.7. As-Is, Where-Is. Sierra shall take the Freight Easement Property in an "as-is, where-is" condition and without any express or implied warranties, including, but not limited to, any warranties of merchantability, fitness for a particular purpose or volume or quality of traffic on the Freight Easement Property, and subject to: (i) encroachments or other existing conditions, (ii) all existing ways, alleys, privileges, rights, appurtenances and servitudes, howsoever created, and (iii) the Commission's rights hereunder.

2.8 Release. Sierra, for itself, its successors and assigns, to the maximum extent permitted by law, hereby waives, releases, remises, acquits and forever discharges the Commission, its officers, employees, agents, successors and assigns, from any Loss in any way arising out of, or connected with, the known or unknown, existing or future physical or environmental condition of the Freight Easement Property and Railroad Facilities (including any Hazardous Materials contamination in, on, under, or adjacent to, the Freight Easement Property, or any clearance constraints on the Freight Easement Property), or any federal, state, or local law, ordinance, rule or regulation applicable thereto.

2.8.1. Sierra hereby grants to Commission, on behalf of any insurer providing property, general liability, or automobile liability insurance to either Sierra or Commission with respect to the operations of Sierra, a waiver of any right to subrogation which any such insurer of Sierra may acquire against Commission by virtue of the payment of any loss under such insurance.

2.8.2. If any loss described in Section 2.7-8 is caused by a third party under contract with the Commission, the Commission may, at its option, (i) pursue any claim it may have against the third party contractor, or (ii) assign to Sierra any such claim, provided that Sierra shall not be obligated to pursue such claim. Any amounts recovered as a result of any such claim shall, to the extent they exceed any fees and costs incurred in pursuing such claim, be used to repair or replace any of the following that are damaged or destroyed in connection with the subject loss:

2.8.2.1. First, Freight Easement Property and Railroad Facilities;

2.8.2.2 Then, railroad equipment

If Sierra commences abandonment proceedings for the subject portion of the Property under Section 8.3, the Commission will not assign any such claim to Sierra and neither party will have any further responsibility under this Subsection 2.78.2 as to such claim. If Sierra's abandonment application is withdrawn, or not approved by the STB, the Commission may assign such claim to Sierra, as provided above

2.8.3. The provisions of this Section 2.7-8 shall survive the termination or expiration of this agreement.

2.9. The rights granted by the Commission under Sections 2.1 - 2.4-5 are subject to all existing licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title that may affect the Property and the word "grant" as used herein shall not be construed as a covenant against the existence of any thereof.

3. **Limitation and Subordination of Rights Granted**

3.1 Commission's Use of Property. The foregoing granted rights are subject and subordinate to the Commission's prior and continuing right to use and maintain the Property for any purpose that is not inconsistent with this agreement. Without limiting the generality of

the foregoing, the Commission may construct, maintain, repair, renew, use, operate, change, modify or relocate public projects of any kind, railroad tracks, signals, communication equipment, fiber optics, pipelines, or other facilities upon, along, or across any or all of the Property, all or any of which the Commission may freely do at any time or times without liability to Sierra for compensation or damages; provided, however, that the Commission may not materially interfere with Sierra's rights and operations under this agreement or Sierra's Freight Service rights and obligations under federal law (unless first approved by the STB); and provided, further, that the Commission shall to the extent possible notify Sierra as soon as practicable of any such planned or actual interference and provided that the Commission takes all practicable measures to minimize any such interference. Sierra shall reasonably cooperate with the Commission in implementing the foregoing uses of the Property. If the Commission or its designee requests Sierra's assistance to transport materials or to perform other transportation or construction services for public projects, Sierra will provide such assistance at rates reasonably to be determined between the parties.

- 3.2. Commission's Inspection Access; Access for Maintenance. The Commission may, as reasonable and as coordinated in advance with Sierra, (i) inspect the Freight Easement Property and the Railroad Facilities, including any rail-yard or maintenance facility used in connection with Freight Service or Tourist Service, and (ii) access the Freight Easement Property and Railroad Facilities (including access with Commission or third party rail vehicles) as necessary to maintain areas of the Property outside of the Freight Easement Property that are not otherwise reasonably accessible. The Commission shall defend, indemnify and hold Sierra, its officers, directors, employees, and agents, harmless from and against Loss arising from injuries to or death of the Commission's officers, directors, employees, agents, invitees, and contractors relating to such inspections, regardless of the cause of such injuries, death, or damage and regardless of the negligence of any person, except to the extent caused by the willful misconduct or gross negligence of Sierra, its employees, or agents. The Commission shall ensure that any of its officers, directors, employees, agents, invitees, and contractors involved in such inspections are trained in all safety requirements and qualified for any operations related to work conducted on or near railroad operations
- 3.3 Future At-Grade Crossings. The parties acknowledge that (i) local governments may desire to create future at-grade public crossings of the Freight Easement Property, and (ii) the Aptos Village Plan.

dated February 23, 2010, specifically includes a future at-grade roadway crossing of the Freight Easement Property at approximately Milepost 12.55. Sierra shall, at no cost or expense to itself, cooperate with the efforts of any applicable local governments to secure PUC approval of such crossings; provided, however, that Sierra shall be entitled to raise any reasonable safety concerns related to such crossings. The fees and costs associated with the construction, maintenance, and repair of such crossings shall be set either by agreement between Sierra and the applicable local government (which agreement shall become a Sierra Agreement under Sections 4.2 and 4.3), or by the PUC pursuant to Public Utilities Code Section 1202, *et seq.*

4. Assignment of certain Contracts and Agreements

4.1. Pursuant to the Assignment and Assumption Agreement dated as of December 18, 2009, Union Pacific assigned to Sierra certain agreements concerning the operation of the Railroad Facilities, including all track agreements, grade crossing agreements, and other operating agreements set forth in Exhibit C hereto (all such agreements hereinafter referred to as the "Sierra Agreements"). Upon close of escrow under the Purchase and Sale Agreement, Union Pacific will assign to the Commission all other agreements relating to the Property, including all easements, licenses, and leases (all such agreements hereinafter referred to as the "Commission Agreements").

4.2. Subject to the provisions of Section 2.3, which prohibit material interference with Sierra's Freight Service rights and obligations under federal law, unless first approved by the STB, any new Sierra Agreement is subject to the Commission's prior written consent and is to be documented by Sierra using forms approved by the Commission, which forms shall, among other things, include provisions indemnifying the Commission and holding it harmless from any Loss in connection with the exercise of rights under such agreements, and the construction, maintenance, or operation, of any facilities constructed in connection with such agreements.

4.3. In addition to the general consent requirement of Section 4.2, Sierra is not, without the Commission's prior written consent (subject to the provisions of Section 2.3, which prohibit material interference with Sierra's Freight Service rights and obligations under federal law, unless first approved by the STB), to execute any new Sierra Agreements affecting the Freight Easement Property or Railroad Facilities for a term exceeding the term of this agreement.

- 4.4 Sierra is not, without the Commission's prior written consent, to terminate or modify any Sierra Agreement.

5. Maintenance and Operation of Railroad Facilities

- 5.1 Initial Rehabilitation and Repair Projects. The Commission may, subject to the Commission's contracting policies, rules, and procedures and to the terms of this agreement, including Section 6.1, perform any rehabilitation of, or repairs to, the Railroad Facilities required to be performed under the terms of the Purchase and Sale Agreement.

5.2 Maintenance of Freight Easement Property and Railroad Facilities.

- 5.2.1 Freight Easement Property and Railroad Facilities. Sierra, at its expense, shall keep the Freight Easement Property and Railroad Facilities used by Sierra (including occasional use, or use for rail car storage or lay down space) in good repair and in a good and safe condition in conformity with applicable law or any Sierra Agreement.

- 5.2.2 Weeds, Trash, Drainage and Graffiti. The parties agree that Sierra shall be responsible for: (i) drainage and culvert maintenance and clearance on the Property unless a third person or entity is contractually responsible for such maintenance and clearance, and (ii) weed abatement, vegetation management, and trash collection over the Freight Easement Property as required by applicable law. The Commission grants Sierra a license to enter all portions of the Property as necessary to perform such maintenance; Sierra shall be required to repair any damage caused as the result of Sierra's performance of any such maintenance. Except as required by applicable law, Sierra shall not be responsible for the prevention, removal, or abatement of graffiti wheresoever it may occur. Sierra shall also not be responsible for drainage maintenance, weed abatement, vegetation management, or trash collection related to any construction by the Commission (except for Railroad Facilities that Sierra is entitled to use), or necessitated by the actions of any third party authorized by the Commission to be on the Property, or related to any actions, omissions, or situations off or outside of the Property.

- 5.2.3 Slopes, Trees and Other Conditions outside of Freight Easement Property. Sierra may, at its option, enter portions of the Property outside the Freight Easement Property to

maintain or repair slopes, clear fallen trees and branches, or address other conditions, as necessary to ensure the safety of Sierra's operations. The Commission grants Sierra a license to enter all portions of the Property as necessary to perform such work. Sierra shall be required to repair any damage caused as the result of Sierra's performance of any such maintenance. The Commission shall have no liability to Sierra for maintenance of portions of the Property outside of the Freight Easement Property and Sierra's exclusive remedies for damage to the Freight Easement Property or Railroad Facilities shall be limited to those set forth in Sections 5.5.3 and 8.3. However, this section shall not apply to any claims that result from the sole active negligence or willful misconduct of the Commission or its officers, directors, employees, agents, contractors, or a third party under contract with the Commission, in which case Sierra's exclusive remedies are those set forth in Section 2.7~~8~~², 8.3 and 14.2.

5.2.4. Scope of Maintenance. For purposes of this section 5.2, the maintenance and repairs to be performed by Sierra include, as required by applicable law, (a) inspections, testing, track profiling, adjustments, lubricating, welding, re-spiking, surfacing, tamping, and any other tasks constituting customary and routine maintenance of track structures; (b) repair, renewal, replacement, or other customary and routine work required to ensure the safety of Railroad Facilities, including compliance with any applicable bridge safety management program regulations that may be promulgated by the Secretary of Transportation pursuant to Public Law 110-432, Section 417, including the regulations set forth in 49 CFR Part 237; (c) weed and brush control and drainage management, and (d) compliance with all mandated reporting. Sierra shall not be in default under this agreement if it does not perform tie replacement programs or upgrades of rail, switches, bridges, or other track material provided that (e) Sierra's failure to perform such replacement programs or upgrades does not violate applicable law or Sierra's specific maintenance obligations under this agreement, and (f) Sierra uses reasonable diligence to seek outside funding sources for such work. The Commission shall have no responsibility to maintain the trackage, structures, or any other Railroad Facilities.

5.2.5 Concurrently with the execution of this agreement and deposit into escrow, both parties shall execute and deliver to the FRA a written notice of the assignment of track

inspection and maintenance responsibilities, and bridge safety management responsibilities, to Sierra in accordance with 49 CFR § 213.5(c) and 49 CFR § 237.3. The notice of assignment shall attach a copy of this agreement.

5.2.6. Limits of Commission Liability. Notwithstanding the limitations on the Commission's maintenance responsibilities set forth in Section 5.2, the Commission shall be responsible for the maintenance of any improvement it constructs on any portion of the Property. As used in this subsection, the term "improvement" excludes improvements made to the Railroad Facilities, unless such improvement is made at the request of a third-party, in which case such third-party shall be responsible for the incremental increase in the maintenance cost thereof. Notwithstanding the foregoing, maintenance responsibility for improvements to public crossings shall be governed by the provisions of Section 3.3

5.3 Ownership of Track Materials. All track materials installed by Sierra as part of the Railroad Facilities shall be of equal or better quality than those track materials existing at the time of execution of this agreement, or after completion of rehabilitation and repair projects by the Commission, including the projects described in Section 5.1, and shall become the Commission's property. All materials removed by Sierra from the Railroad Facilities and replaced as part of maintenance, repairs, or capital improvements shall, if the decision to remove them was Sierra's, become the property of Sierra. Sierra shall not, without the prior written approval of Commission, remove track materials or other improvements from the Property unless they are replaced as provided in this section. Sierra shall keep a written record of track materials and other improvements removed from, or installed upon, the Property and shall provide an updated copy of the record to the Commission on or before the end of each calendar quarter.

5.4 Clearing of Obstructions, Derailments, and Wrecks. Sierra shall as soon as practicable clear any obstructions, derailments, and wrecks of railroad equipment or Railroad Facilities.

5.4.1. To the extent that any such obstruction, derailment, or wreck damages the Property, Sierra shall as soon as practicable restore the Property to the condition it was in prior to the obstruction, derailment, or wreck.

5.4.2. If Sierra fails to comply with the provisions of this section, the Commission may perform the required action and

charge Sierra the reasonable cost thereof. Notwithstanding the foregoing, the Commission shall not charge Sierra for the restoration of any damage caused by any third party to any bridge or if in the Commission's reasonable judgment, such damage does not expose the Commission to potential liability to the FRA, PUC, or any other third party, and either (A) such damage does not obstruct or interfere with any roadway or other property or facility used by the Commission or another third party, or (B) Sierra abandons the subject portion of the Property under Section 8.3. In addition, the Commission shall not charge Sierra for the restoration of any damage caused by the Commission's contractors, or any third party granted access to the Property by specific agreement with the Commission.

- 5.4.3. Nothing in this section is intended to preclude legal action by Sierra or the Commission against any third party causing such obstruction, derailment, or wreck

5.5. Responsibility for Repair or Replacement.

- 5.5.1. Damage Caused by Freight Operations. Except as otherwise set forth in this agreement, Sierra will be responsible to repair or replace any damage to the Freight Easement Property or Railroad Facilities caused by, or related to, Sierra's operations.
- 5.5.2. Damage Caused by Commission. Sierra will not be responsible to repair or replace any damage to the Freight Easement Property or Railroad Facilities caused by the Commission, its officers, directors, employees, agents, or contractors.
- 5.5.3. Damage Caused by Acts of God or Other Factors beyond Sierra's Control. If any portion of the Freight Easement Property or the Railroad Facilities are damaged or destroyed by flood, fire, civil disturbance, earthquake, earth movement, storm, sabotage, act of God, terrorism, accident or any other event beyond Sierra's reasonable control, including damage or destruction caused by third parties, even if said damage or destruction originates outside of the Freight Easement Property, then Sierra may, but shall not be required to, at no cost or expense to the Commission, (a) repair, or cause to be repaired, the damaged or destroyed portion of the Railroad Facilities, (b) replace, or cause to be replaced, such portion of the Freight Easement Property or the Railroad Facilities; or (c) seek to abandon Tourist

Service or Freight Service over all or such portion of the Property as Sierra deems appropriate as set forth in Section 8.3.

6. Construction, Relocation, or Removal of Railroad Facilities

6.1. By the Commission.

- 6.1.1. The license herein granted is subject to the Commission's needs and requirements to improve and use the Property. Subject to Sierra's rights under this agreement, the Commission, at its sole cost and expense, may add to or remove any portion of the Railroad Facilities, or change or relocate them to new locations as reasonably designated by the Commission, whenever, in the furtherance of the Commission's needs and requirements, the Commission finds such action to be necessary.
- 6.1.2. In the course of performing such work, the Commission may not materially reduce, or otherwise materially interfere with, Sierra's rights and operations under this agreement or Sierra's Freight Service rights and obligations under federal law (unless first approved by the STB). The Commission shall to the extent possible notify Sierra as soon as practicable of any such planned or actual interference and take all practicable measures to minimize any such interference.
- 6.1.3 Sierra shall in such cases provide the Commission with a fixed-price quote for performing any related work, and the Commission shall have the option of accepting Sierra's quote and having Sierra perform the work, performing the work itself, or having another qualified rail contractor perform such work. If the Commission selects a third-party contractor, the contractor shall execute Sierra's Right of Entry Agreement (a copy of which is attached as Exhibit D)
- 6.1.4 The Commission shall have the right to salvage, stockpile, or otherwise dispose of any Railroad Facilities removed pursuant to this section, provided, however, that if the removed Railroad Facilities are reusable elsewhere on the Freight Easement Property, then Sierra shall have the right to so reuse them. Any Railroad Facilities not so reused on the Freight Easement Property shall be returned to the Commission upon expiration or termination of this

agreement and may not be sold to third parties or used elsewhere.

6.1.5. All such work performed, and any installation of Railroad Facilities, shall be in conformance with all applicable laws. If the Commission relocates any portion of the tracks used for Freight Service, the centerline of the Freight Easement Property shall, upon completion of the relocation work, be deemed to have been modified to coincide with the centerline of the realigned tracks.

6.2. By Sierra. Sierra may, at its cost and expense, modify or improve the Freight Easement Property and Railroad Facilities as needed to accommodate its Freight Service or Tourist Service; provided, however, that Sierra first obtains the Commission's written approval of Sierra's plans for such modifications and improvements, subject to the provisions of Section 2.3, which prohibit material interference with Sierra's Freight Service rights and obligations under federal law, unless first approved by the STB, which approval may be granted or withheld in the Commission's sole and absolute discretion. Subject to the provisions of Section 2.3, which prohibit material interference with Sierra's Freight Service rights and obligations under federal law, unless first approved by the STB. Sierra's modification or improvement of the Freight Easement Property and Railroad Facilities will be coordinated may not interfere with or impede any existing or future legal public uses of the Property that the Commission may authorize. Sierra may, upon the termination of this agreement or upon the abandonment of any applicable section of the Freight Easement Property or portion of the Railroad Facilities, remove any modifications or improvements to such Freight Easement Property or Railroad Facilities that were paid for by Sierra, that do not constitute any repair or replacement to such Freight Easement Property or Railroad Facilities, and that have not become fixtures to such Freight Easement Property or Railroad Facilities.

6.3 The Commission understands that Sierra requires locations outside of the Freight Easement Property at which to store and maintain equipment and materials necessary for Sierra's Freight Operations including a locomotive p.t. The parties agree that Sierra may store equipment and materials at the location known as Wrigley's, located between Swift Street and Natural Bridges Drive at or about Milepost 21.5. The parties agree that Sierra will need to identify and construct additional maintenance and storage locations on the Property, which Sierra may do as needed, subject to applicable law and the Commission's prior written consent, (subject to the

provisions of Section 2.3, which prohibit material interference with Sierra's Freight Service rights and obligations under federal law, unless first approved by the STB), which consent may be granted or withheld in the Commission's sole and absolute discretion.

- 6.4. The terms, conditions, and stipulations expressed in this agreement as to the Freight Easement Property and Railroad Facilities shall apply to the Freight Easement Property and Railroad Facilities as they may at any time be expanded, added to, modified, changed, or relocated.

7. License Fees

- 7.1. For consideration of the rights granted under this agreement, Sierra shall pay the Commission the following fees as calculated on a quarterly basis:

7.1.1. Freight Service:

7.1.1.1. First 500 carloads per quarter. \$0.00,

7.1.1.2. Any additional carloads per quarter: 5% of Sierra's handling revenue for such carloads.

7.1.1.3. Storage: \$1.00 per day per car in storage.

- 7.1.2. Temporary Use of Laydown Space Sierra may from time to time make arrangements with a temporary shipper by rail for the use of otherwise unused laydown space (open space outside of the Freight Easement Property next to railroad track). The parties agree that Sierra will need to identify such temporary laydown locations on the Property, which Sierra may do as needed, subject to applicable law and the Commission's prior written consent. Sierra shall also notify the Commission of the expected duration of each such use. If subsequently the Commission reasonably objects to any specific use of laydown space by Sierra or its shipper, the Commission will make available an alternative laydown location reasonably acceptable to Sierra, and Sierra shall as soon as practicable discontinue that use of such laydown space and move to the alternative laydown location. Sierra shall, in addition to the license fees set forth above, pay the Commission 20% of all revenue (if any) received by Sierra by such shippers for such use of such laydown space.

- 7.1.3. Tourist Service: \$1.00 per passenger.

- 7.2. Sierra shall, on or before the last day of the month following the end of each calendar quarter, determine the amounts payable to the Commission arising from the preceding calendar quarter and shall provide the Commission with a statement describing all amounts due the Commission during the quarter. Sierra shall also, upon reasonable request from the Commission, make available for inspection and copying all documents and receipts upon which such fees are based.
- 7.3. Sierra shall, on or before January 31 of each calendar year, pay the Commission all amounts due the Commission for the prior four calendar quarters.

8. Term and Termination

- 8.1. This agreement shall become effective when fully executed and delivered to the parties in accordance with Section 27.4, and shall continue in full force and effect for a period of 10 years unless otherwise terminated as provided herein.
- 8.2. If (i) Sierra does not regularly use the Freight Service or Tourist Service rights in accordance with the plan approved by the Commission (other than railcar storage rights) herein granted over any segment of the Freight Easement Property, or the Railroad Facilities on such segment, for a period of one year without the Commission's prior written approval, or (ii) Sierra remains in default in its performance of any covenant or agreement contained herein for a period of 30 days after written notice from the Commission to Sierra specifying such default, the Commission may, at its option, forthwith terminate this agreement by written notice, provided however, that if such default cannot reasonably be cured within 30 days after such notice, the Commission may not terminate this agreement provided that Sierra begins to cure the default within the 30-day notice period and proceeds diligently to complete such cure. Upon expiration or termination of this agreement by either party, Sierra shall proceed to abandon Freight Service in accordance with section 8.3, provided, that no expiration or termination of this agreement shall be effective unless and until the STB has approved such abandonment. As used in this Section 8.2, the term "regularly use" means revenue train operations for either Freight Service or Tourist Service consisting of a minimum of 40 freight cars per year, or 15,000 passengers per year (beginning with the third year following the effective date of this agreement), as applicable.

- 8.2.1. The parties recognize that there are currently little or no revenue train operations on the Freight Easement Property

or Railroad Facilities and that it may take time for Sierra to develop such operations, if they can be developed. The Commission thus agrees that it shall not terminate this agreement due to the lack of any such revenue train operations for a period of three years from the effective date of this agreement.

- 8.2.2. The Commission also agrees that it shall not terminate this agreement due to Sierra's failure to use the rights herein granted with respect to any segment of the Freight Easement Property or Railroad Facilities that is necessary to support any Freight Service or Tourist Service over any regularly-used portion of the Freight Easement Property north of any unused segment.

8.3. Abandonment.

- 8.3.1. Sierra may at any time, in its sole and absolute discretion, immediately and without any liability to the Commission: (a) abandon Tourist Service over all or such portion of the Property as Sierra deems appropriate, and (b) seek STB approval to abandon Freight Service over all or such portion of the Property as Sierra deems appropriate. In the event that Sierra seeks to abandon Freight Service, Sierra shall provide the Commission with 90 days advance notice of Sierra's intention and shall, at no cost to Sierra, cooperate with the Commission's efforts to take upon itself all Freight Service operations relating to the Property, to appoint another person or entity to do so, or to rail bank any portion of the Property as to which Sierra intends to abandon Freight Service. Nothing in this agreement is intended by the parties to limit these rights on the part of Sierra and the Commission agrees that it will cooperate with Sierra in Sierra's efforts to so abandon any Tourist Service or Freight Service. No such abandonment, transfer of Freight Service operations, or rail banking, shall be effective unless and until the STB has issued its approval thereof. In addition, this agreement shall not terminate with respect to all or any portion of the Property unless and until the STB has issued such approval.

- 8.3.2. Any abandonment proceedings instituted by Sierra shall comply with the abandonment provisions set forth in the Freight Easement, including the railbanking/OFA provisions thereof.

- 8.3.3 To the extent the SIB approves abandonment of that Sierra abandons Freight Service over all or any part of the Freight Easement Property or Railroad Facilities, this agreement and any other rights and obligations of Sierra to the Commission, shall, at the time of consummation of such abandonment, terminate with respect to any abandoned portions of the Freight Easement Property and Railroad Facilities. Upon the effective date of such abandonment, Sierra shall, if so requested by the Commission, (i) assign to the Commission any Sierra Agreements affecting the abandoned portions of the Freight Easement Property and Railroad Facilities, (ii) quitclaim the abandoned portion of the Freight Easement to the Commission, and (iii) execute any additional documents reasonably necessary to effectuate the purpose and intent of this agreement.
- 8.4. All obligations incurred by the parties prior to the termination of this agreement shall be preserved until satisfied. Notwithstanding the foregoing, if Sierra terminates this agreement as to any portion of the Freight Easement Property or Railroad Facilities after damage to the same by any third party, or because the cost to maintain, repair, or replace the same is not economical, Sierra shall thereafter have no liability to the Commission for the cost to perform any related obligations.
- 8.5 Upon the effective date of termination of this agreement, Sierra shall, if so requested by the Commission, (i) assign to the Commission all Sierra Agreements, (ii) quitclaim the Freight Easement to the Commission, and (iii) execute any additional documents reasonably necessary to effectuate the purpose and intent of this agreement.
9. **Insurance.** Sierra and the Commission shall obtain the insurance set forth below, to be kept in force during the life of this agreement. All insurance policies must be written by a reputable insurance company reasonably acceptable to the Commission, or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in California. The limits of insurance coverage required under this section shall be increased every five years during the term hereof and any extended term based on any increases or decreases in the Producer Price Index, or any successor index.
- 9.1. Sierra Insurance Sierra shall, at its own cost and expense, provide and procure Commercial General Liability ("CGL") and, as applicable, Workman's Compensation or Federal Employer's Liability Act ("FELA"), insurance.

- 9.1.1. The CGL insurance policy providing bodily injury, including death, personal injury and property damage coverage shall have a limit of not less than \$25 million each occurrence and an aggregate limit of not less than \$50 million. The self-insured retention may not exceed \$100,000 (as that value is periodically adjusted by the Consumer Price Index from and after the effective date of this agreement.) The CGL insurance policy must be written on ISO occurrence form CG 00 01 12 04 or a substitute form providing reasonably equivalent coverage. This insurance shall contain broad form contractual liability covering the indemnity provisions contained in this agreement, coverage for railroad operations, and coverage for construction or demolition work on or near railroad tracks. Prior to the execution of this agreement, Sierra shall provide the Commission with a certificate of insurance on a standard ACORD form, or other form reasonably acceptable to the Commission, substantiating the required coverages and limits set forth herein. Upon request by the Commission, Sierra shall immediately furnish a complete copy of any policy required hereunder, including all endorsements, with said copy certified by the insurance company to be a true and correct copy of the original policy.
- 9.1.2. The CGL insurance policy must include the Commission as an "additional insured" (using ISO Additional Insured Endorsement CG 20 26 or a substitute form reasonably acceptable to the Commission providing reasonably equivalent coverage).
- 9.1.3. Required Provisions: The CGL insurance policy shall contain, or be endorsed to contain, the following provisions:
- 9.1.3.1 For any claims related to this agreement, Sierra's insurance coverage shall be primary insurance as respects the Commission, its directors, officers, employees, and agents and any insurance or self-insurance maintained by the Commission. Its directors, officers, employees, or agents, shall be in excess of Sierra's insurance and shall not contribute to it. However, this section shall not apply to any claims that result from the sole negligence or willful misconduct of the Commission or its officers, directors, employees, agents, or invitees; as to any such claim, the

Commission's insurance shall be primary and any insurance or self-insurance maintained by Sierra, its directors, officers, employees, or agents, shall be in excess of Commission's insurance and shall not contribute to it.

9.1.3.2. Any failure by Sierra to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Commission, its directors, officers, employees, or agents.

9.1.3.3. Sierra's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability

9.1.3.4. Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the Commission.

9.1.4. Workers' Compensation or FELA insurance shall cover any statutory liability as determined to be applicable by the compensation laws of the State of California or FELA, as applicable, with a limit of at least \$1 million.

9.1.5. The fact that insurance is obtained by Sierra or by the Commission on behalf of Sierra will not be deemed to release or diminish Sierra's liability, including liability under the indemnity provisions of this agreement. Damages recoverable by the Commission from Sierra or any third party will not be limited by the amount of the required insurance coverage.

9.2. Commission Insurance: The Commission shall, at its own cost and expense, provide and procure such Commercial General Liability ("CGL") and Workman's Compensation insurance as it deems necessary to cover its obligations under this agreement.

10. **Notices.** All correspondence, notices, and other papers shall be delivered either in person or by certified or registered mail, postage prepaid, to the parties hereto at the following addresses:

If to Sierra	President
	Sierra Northern Railway

341 Industrial Way
Woodland, CA 95616
Fax: 530-666-2919

If to Commission: Executive Director
Santa Cruz County Regional Transportation
Commission
1523 Pacific Avenue
Santa Cruz, CA 95060
Fax: 831-460-3215

11. Coordination Committee

11.1. In order to ensure the safety and efficiency of all operations on the Property, the parties shall establish a Coordination Committee. The Coordination Committee shall be composed of two representatives from each party (and any other persons or entities as the parties may mutually agree) and shall (a) serve as a forum to coordinate the parties' activities and resolve questions or disputes (but only to the extent the parties' representatives have been so authorized), and (b) be responsible to make recommendations to the parties. The Coordination Committee shall meet on a regular schedule to be determined by the parties, but may be convened for special meetings by either party upon 10 days written notice to the other party. Following each meeting, the Coordination Committee shall deliver written minutes of such meeting to Sierra and the Commission.

12. Claims and Liens for Labor and Material

12.1. Sierra agrees to pay in full for all materials joined or affixed to the Property, to pay in full all persons who perform labor upon the Property, and not to permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the Property, as to any work done or materials furnished thereon by Sierra or at Sierra's request. Sierra shall indemnify, hold harmless and defend Commission (with counsel reasonably acceptable to Commission) against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed or materials furnished.

13. Property Taxes

13.1 So far as it lawfully may do so, the Commission shall assume, bear, and pay all property and other taxes and assessments of whatsoever nature or kind (whether general, local, or special) levied or assessed upon or against the Property, excepting taxes

levied upon and against any Freight Easement Property or Railroad Facilities. Sierra shall assume, bear, and pay all property and other taxes and assessments of whatsoever nature or kind (whether general, local, or special) levied or assessed upon or against any Freight Easement Property or Railroad Facilities, including possessory interest taxes under California Revenue and Taxation Code section 107 *et seq.*, unless applicable law otherwise excuses payment of taxes due to the Commission's ownership of the Property, the Freight Easement Property, or the Railroad Facilities.

14. Indemnity

14.1. Sierra shall indemnify, defend and hold harmless the Commission from any Loss which is due to or arises from: (a) Sierra's operation, maintenance, repair, or use of the Freight Easement Property, Railroad Facilities, any appurtenances thereto, or any part thereof; (b) Sierra's provision of Freight Service or Tourist Service; or (c) Sierra's failure to comply with or perform any of the terms and conditions set forth in this agreement; except to the extent that the Loss is caused by the sole negligence or willful misconduct of the Commission, its officers, agents, or employees, or a breach of an express material warranty of the Commission. The provisions of this section shall survive the termination or expiration of the term of this agreement.

14.2. The Commission shall indemnify, defend and hold harmless Sierra from any Loss which is due to or arises from the sole negligence or willful misconduct of the Commission, its officers, agents, employees, and contractors. For purposes of this Section 14.2 only, the term "Loss" is limited to any loss, damage, claim, demand, action, cause of action, penalty, fine, payment, cost, liability, or expense of whatsoever nature, including court costs and reasonable attorneys' fees, resulting from or related to: (a) any injury to or death of any person, including officers, agents, and employees of the Commission or Sierra; or (b) damage to or loss or destruction of Sierra's equipment, rolling stock and any items being transported on behalf of Sierra's customers. Any Loss related to damage to or destruction of the Freight Easement Property or Railroad Facilities is subject to the provisions of Section 2.78. The provisions of this section shall survive the termination or expiration of the term of this agreement.

15. **Removal of Sierra Equipment, Personnel, and Property upon Termination of Agreement.** Prior to, or upon, the termination of this agreement, Sierra shall, at its sole expense, remove its equipment, personnel, and other property from the Freight Easement Property and Railroad Facilities and shall restore, to the Commission's reasonable

satisfaction, such portions of the Freight Easement Property and Railroad Facilities used by Sierra to as good a condition as they were in at the beginning of this agreement or after the completion of rehabilitation and repairs by the Commission, including the projects specified in Section 5.1, excepting normal wear and tear. If Sierra fails to do the foregoing, the Commission may do such work at the cost and expense of Sierra. Sierra may not remove any property, including the Railroad Facilities, that is or becomes the property of the Commission under this agreement.

16 Hazardous Substances and Wastes

16.1. Sierra shall not be liable or responsible for any Hazardous Materials present on, in, or under the Property, or other problems relating to the Property, prior to December 31, 2009, which is the commencement date of its operations under its lease agreement with Union Pacific Railroad, except to the extent Sierra's activities exacerbate the contamination of any such pre-existing Hazardous Materials.

16.2 Sierra shall comply with all applicable laws in its occupancy, operation, and maintenance of the Freight Easement Property and Railroad Facilities. Without first obtaining the Commission's written permission (which may be withheld in the Commission's sole reasonable discretion), Sierra shall not treat or dispose of Hazardous Materials on the Freight Easement Property or Railroad Facilities. Sierra shall not release any Hazardous Materials on or at the Freight Easement Property or Railroad Facilities, including through any drainage or sewer systems. Sierra assumes all responsibility for the investigation and cleanup of any such release or exacerbation by Sierra and shall indemnify, defend, and hold harmless the Commission and its property, its officers, agents, and employees, for all costs, including reasonable environmental consultant and reasonable attorneys' fees, and claims resulting from or associated with any such release or exacerbation by Sierra. Sierra shall assume all responsibility for and shall indemnify, defend, and hold harmless Commission against all costs and claims associated with a release or leak of Hazardous Materials, or exacerbation of pre-existing Hazardous Materials, occurring between December 31, 2009, and the expiration or sooner termination of this agreement, and related to Sierra's use of the Freight Easement Property and Railroad Facilities, unless such event was caused by the sole negligence or willful misconduct of the Commission, its officers, employees, or agents.

16.3. Sierra shall not install any above-ground or underground storage tanks without the Commission's prior written consent, which consent may be granted or withheld in Commission's sole and

absolute discretion. If such consent is granted, Sierra shall obtain any necessary permits, notify the proper authorities, and provide the Commission with copies of any such permits and notifications. Sierra shall assume all responsibility for and shall indemnify, defend, and hold harmless the Commission against all costs and claims associated with a release or leak of the contents of any such tank occurring between December 31, 2009, and the expiration or termination of this agreement, unless such event was caused by the sole negligence or willful misconduct of the Commission, its officers, employees, or agents.

- 16.4 The Commission understands and acknowledges that the regular operation and maintenance of railroad equipment and tracks involve the storage, use, and release of *de minimus* amounts of Hazardous Materials, including petroleum products, creosote, and chromated copper arsenate. The Commission agrees that Sierra shall not be liable or responsible for the *de minimus* release of any such Hazardous Materials, unless (i) such release violates applicable law, or (ii) the Commission is otherwise entitled to defense and indemnity under Section 14.1.
- 16.5. If Sierra knows, or has reasonable cause to believe, that any Hazardous Materials have come to be located under or about the Freight Easement Property or Railroad Facilities, other than as specifically provided herein or as previously consented to in writing by the Commission, Sierra shall immediately give the Commission written notice thereof, together with a copy of any statement, report, notice, registration, application, permit, business plan, license, claim, action, or proceeding given to or received from any governmental authority or private party concerning the presence, spill, release, discharge of, or exposure to, such Hazardous Materials.
- 16.6 This Section 16 shall continue in full force and effect regardless of whether this agreement is terminated pursuant to any other provision or the Freight Easement Property and Railroad Facilities are abandoned and vacated by Sierra.
17. **Trespassers and Dangerous Conditions.** Sierra shall not be required to take any action or incur any expense (including posting signage or warnings, providing fencing or other security) as to or against trespassers on the Property, or invitees of the Commission, other than to promptly notify local law enforcement and the Commission concerning any trespassers observed on the Property by Sierra personnel. If Sierra becomes aware of any dangerous conditions on or about the Property, Sierra shall promptly notify the Commission of such conditions.

18. **Waivers.** The failure of either party hereto to enforce any of the provisions of this agreement, or to enforce any right or option which is herein provided, shall in no way be construed to be a waiver of such provision(s) as to the future, nor in any way to affect the validity of this agreement or any part hereof, or the right of either party to thereafter enforce each and every such provision and to exercise any such right or option. No waiver of any breach of this agreement shall be held to be a waiver of any other or subsequent breach.
19. **Consent.** Unless expressly provided to the contrary elsewhere in this agreement, whenever the consent, approval, judgment, or determination (collectively, "consent") of a party is required or permitted under this agreement, the consenting party shall exercise good faith and reasonable judgment in granting or withholding such consent. No party may unreasonably withhold or delay its consent: consent shall be deemed to have been withheld if a party fails to consent to the other party within 30 days of having been given written notice of the other party's intention to take any action as to which consent is required or permitted
20. **Non-binding Mediation**
- 20.1. If at any time a question or controversy shall arise between the parties hereto in connection with this agreement and upon which the parties cannot agree, such question or controversy shall be submitted to a single mediator within 20 days after written notice by one party to the other party of its desire for mediation. The parties shall in good faith consult to select a mutually acceptable mediator. The mediator so selected shall be a person with at least one-year of exposure to the concepts of railroad operations and maintenance.
- 20.2. Upon selection of the mediator, said mediator shall with reasonable diligence determine the questions as disclosed in said notice of demand for mediation and shall give both parties reasonable notice of the time and place of any mediation. Until the completion of mediation, performance under the agreement shall continue in the manner and form existing prior to the rise of such question
- 20.3. The compensation, cost, and expenses of the mediator shall be paid in equal shares by the parties.
21. **Entire Agreement.** This document, and the exhibits attached hereto, constitute the entire agreement between the parties, all oral agreements being merged herein, and supersedes all prior representations, agreements, arrangements, understandings, or undertakings, whether oral or written, between or among the parties relating to the subject matter of this agreement that are not fully expressed herein

22. **Modification to Agreement.** The provisions of this agreement may be modified at any time by agreement of the parties hereto, provided such modification is in writing and signed by all parties to this agreement. Any agreement made after the date of this agreement and related to the subject matter contained herein shall be ineffective to modify this agreement in any respect unless in writing and signed.
23. **No Assignment Absent Consent.** Except as specifically provided in this agreement, Sierra shall not assign this agreement, in whole or in part, or any rights herein granted, without the Commission's prior written consent.
24. **Successors and Assigns.** Subject to the provisions of Section 23, this agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and assigns.
25. **Venue and Choice of Law**
- 25.1. Any and all disputes, controversies, or claims arising out of, relating to, or in connection with this agreement shall be instituted and maintained in a competent court in San Francisco County, California and the parties hereby consent to the jurisdiction of any such court and to service of process by any means authorized under California law
- 25.2. This agreement shall be governed, construed, and enforced in accordance with the laws of the State of California, without reference to its conflicts of laws provisions. The prevailing party in any claim or action arising out of or connected with this agreement shall be entitled to recover all reasonable attorneys' fees and related costs, in addition to any other relief that may be awarded by any court or other tribunal of competent jurisdiction.
26. **Acts of God and Other Disruptions of Service** Neither party shall be deemed to be in default of this agreement if any failure to meet any condition or to perform any obligation or provision hereof is caused by, a result of, or due to strikes, insurrections, acts of God, or any other causes beyond the party's control; provided, however, that performance shall only be excused for as long as the disruption persists.
27. **Miscellaneous**
- 27.1. In the event that any of the provisions of this agreement are held by a court or other tribunal of competent jurisdiction to be invalid or unenforceable, the remaining portions hereof shall remain in full force and effect and any invalid or unenforceable provisions shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary

to make such provisions valid and enforceable. Without limiting the generality of the foregoing, if the requirement in Section 5.2 that Sierra comply with applicable bridge safety management program regulations (under Public Law 110-432, Section 417) is held to be a non-delegable duty of the Commission, the Commission may, at its option, (i) undertake this obligation and charge Sierra for the cost thereof, or (ii) terminate this agreement.

- 27.2. Each party has participated in negotiating and drafting this agreement so if an ambiguity or a question of intent or interpretation arises, this agreement is to be construed as if the parties had drafted it jointly, as opposed to being construed against a party because it was responsible for drafting one or more provisions of this agreement.
- 27.3. Each party acknowledges that the officer executing this agreement has the authority to enter into this agreement on behalf of the party and in so doing is authorized to bind the party on whose behalf he is signing, to the terms and conditions of this agreement.
- 27.4. This agreement may be executed in one or more counterparts and by facsimile signature, each of which shall be deemed an original, but all of which together constitute one and the same instrument. Each party shall deposit the executed agreement into escrow with instructions to deliver the agreement upon close of escrow under the Purchase and Sale Agreement.

In witness whereof, the parties hereto have caused this agreement to be executed as of the date first herein written.

SIERRA NORTHERN RAILWAY

**SANTA CRUZ COUNTY REGIONAL
TRANSPORTATION COMMISSION**

By: _____
David Magaw
President

By: _____
George A. Dondero
Executive Director

By its signature below, Sierra Railroad Company, a California corporation, acknowledges that it is the parent company of Sierra Northern Railway and agrees to be bound by the terms and conditions of this agreement as if it were a party, except for such terms and conditions that relate to Sierra Northern Railway's obligations to provide common carrier freight rail service.

SIERRA RAILROAD COMPANY

By: _____
Mike Hart, President

Exhibit A
Map of Railroad Facilities

Exhibit B

Permitted Rail Car Storage Locations

Exhibit C
Sierra Agreements

Exhibit D
Form of Sierra Right of Entry Agreement